(2004) 09 JH CK 0006

Jharkhand High Court

Case No: C.W.J.C. No. 2109 of 1996 (R)

Narendra Kumar Giri		APPELLANT
	Vs	
Central Coal Field Ltd. and Others		RESPONDENT

Date of Decision: Sept. 13, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 4 JCR 764

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: M.M. Pal, for the Appellant; A.K. Das, for the Respondent

Judgement

Vikramaditya Prasad, J.
Hear both the sides.

2. This writ has been filed for quashing the order of dismissals per Annexure-10 and order of appellate authority as contained in Annexure-13 with

a further direction upon the respondents of reinstate the petitioner and to allow him to perform regular duties on the original post with full back

wages and all consequential benefits.

3. The following are points for determination in this case;

(i) If the petitioner is a workman his writ can be maintainable without availing the alternative remedy under the Industrial Disputes Act.

(ii) If in the charge-sheet served upon a proceedee, it is stated that he may be dismissed for the following charges and ultimately resulting into

dismissal after conclusion of the proceedings then whether a preconceived mind to punish the proceedee can be inferred?

(iii) Whether a plea of some episode taking place many years before when the proceedee appeared as a co-workman in another proceeding, had

certain threat can the proceedee take such plea in the subsequent proceeding and demand from the Management to provide him security and also

to record vediography of the whole proceedings and in case of denial he does not participate and subsequently the proceeding is decided ex parte

whether it can be said that there-was denial of principles of natural justice?

(iv) Whether if two Enquiry Officers arc appointed to enquire into three different charges arising out of first charge itself and then disciplinary

authority passes a common order can it be held to be legal?

(v) Whether by stating in the show cause that at the relevant time for which the petitioner was proceeded the person concerned who alleged the

charges against him was himself drunk ""UNPAR CHADA GAYEE THI"" amounts to using abusive languages against the superior or co-worker

and consequently whether on this score a fresh charge can be framed?

(vi) Whether if the proceedee has inter-changed his duty at the relevant time when the first charge was framed the workman who had inter-

changed charge against whom there was no proceeding then proceeding against the petitioner only amounts to discrimination?

(vii) When the disciplinary authority while awarding the punishment finds that the service record of the petitioner has been clean whether in the

counter affidavit in the writ proceeding can be said that the service record of the petitioner was not clean and therefore, the sentence awarded was

adequate?

4. The aforesaid questions arose out of the following facts. The petitioner admittedly was a workman and on the alleged date i.e. on 8.1.1998 he

was posted at Bachra area in the district of Hazaribagh of the respondents-Colliery. The electric power suddenly failed then an information was

sent to him, as he was incharge of generator set, to on the switch of generator set, but he did not switch on the generator set. Consequently the

Executive Engineer himself went, to him but he did not switch on generator set stating that with the present strength he could not switch on the

generator set and therefore, he was given the following charges :

Charge-Sheet No. PO (B)/PO/Chr. Sht/ll-A/95/10810-15 dated 20/ 21.1.1995. "

On 8.1.1995 (Sunday at about 3.45 p.m. 11 KV. DVC, Ray-Bachra Feeder power was failed and due to this main- tenance work of Mine No.

1 was stopped, Sri Bishwajaeet Prasad, Tele Optr., Bachra, was sent to you personally to ask you to give power from DG set for maintenance

work but you refused to give power with present sanctioned manpower"".

5. Then the petitioner filed show cause and that led to the following charges :

Charge-Sheet No. PO (B)/PO/Chr. Sht/95/11139-45 dated 30/31.1.1995.

On 8,1.1995 it has been found that you and inter changed your shift duty with Sri B. Ram, Foreman on your own accord without prior permission

of your superior.

You are hereby requested to state as to why disciplinary action even amounting to dismissal from service of the C.C. Ltd. should not be taken

against you under the Certified Standing Order applicable to this mine by which you arc covered on account of the following charges :

You also refused to give DG power when the EE (E & M), Bachra went and personally approached and told to give DG power you have flatly

refused and told him that you will only start the Engine when Generator Power of DG Plant is sanctioned by Project Officer, Bachra, due to which

the maintenance work of Mine No. 1 has been suffered and affected the production. This is a serious misconduct, on your part.

Further during inspection of DG sent on 8.1.1995 at 10 p.m. it has been found that after your refusal to give DG power to the mine, you left then

working place unauthorisedly and without permission of your superior.

Then he was again charge-sheeted on 9.2.1995 for the following charge :

Charge-Sheet No. PO (B)/PO/Chr. Sht/95/11418-23 date 9/2.1995.

That in the reply of charge-sheet No. PO (B)/PO/Chr. Sht/1 l-A/95/10810- 15, dated 21.1.1995, and 11139-45, dated 30/30.1.1995. You

have used abusing language against the management in general and against the under-signed in particular.

Moreover you have threatened that all Overmen of Bachra will go an TORK TO RULE from 15.2.1995.

Then again he was charge-sheeted on 15.2.1995 for the following charge :

Charge-Sheet No, PO (B)/PO/Chr. Sht./l l-A/94/11801-e-, dated 15/2.1995.

In reply to ""Charge-Sheet No. (POB)/ PO/Chr. Sht/95/11418-23, dated 9/2.1995 again you have submitted reply in objectionable language. You

have requested for C. L. on 13.2.1995 and 14.2.1995 for the purpose of filing a petition in Ranchi Bench of Patna High Court against the

management, can not be granted in view of the facts that your presence is required for domestic enquiry.

6. For the first charge one Enquiry Officer was appointed and for the rest charges another Enquiry Officer was appointed. Both the Enquiry

Officer found that the charge Nos. 3 and 4 were vague and submitted their reports to the disciplinary authority and the disciplinary authority

ultimately passed the order of dismissal. It is relevant to mention that the petitioner had claimed that as earlier when he has appeared as a co-

worker in another proceeding years back he was threatened and, therefore, he wanted recording of vediography of whole proceedings and

security. His case was that he asked some questions, which was not allowed to ask and, therefore, he did not appear in the proceeding and the

proceeding was decided ex parte.

7. Question No. (i).-The argument. raised by the learned counsel for the respondents, is that the petitioner is a workman and he has a remedy

under the Industrial Dispute Act, so, he should have raised industrial dispute and as he had come directly to this Court in a writ, the writ is not

maintainable. I find that this writ was admitted in the year (sic) after hearing both the sides. No doubt that the petitioner could not prove that

foreman is not a workman but since the writ was admitted on hearing both the parties, such plea of lack of jurisdiction cannot be allowed after 7

years of the admission of the writ particularly when the respondents did not prefer any appeal against the admission. In the aforesaid circumstances

even in face of alternative remedy if the matter was heard at the time of admission and the writ was admitted then it amounts to rejection of the plea

of the respondents at that time and consequently this cannot be raised at this stage after 7 years as it will cause further harassment to the petitioner,

Question. No. 1 is answered accordingly.

Question No. (ii).-The charge No. 1 emphasis reads as follows :

Charge-Sheet No. PO (B)/PO/Chr. Sht/1 l-A/95/10810-15, ... dated 20/21.1.1995.

On 8.1.1995 (Sunday at about 3.45 p.m. when 11 KV. DVC. Ray-Bachra Feeder power was failed and due to this maintenance work of Mine

No. 1 was stopped. Sri Biswajeet Prasad, Tele. Optr., Bachra, was sent to you personally to ask you to give power from DG set for maintenance

work but you refused to give power with present sanctioned manpower.

Thus in the first charge it was stated that why disciplinary action even amounting to dismissal should not be taken against him. Generally after

proving of the charge when the show cause is served upon the proceedee and he is communicated of the proposed punishment such query can be

there. But if in charge-sheet itself, such a clause is inserted then it is likely to put a proeeedee under some apprehension. The domestic enquiry is

also a quasi-judicial enquiry and it should be conducted in an impartial atmosphere reposing confidence. Any such threatening used in the charge-

sheet itself vitiates that atmosphere and if in that circumstances taking into consideration the previous episode, the petitioner wanted better

protection then his fear can not be said to be unjustified altogether. There is no answer on this point by the respondents. So when the charge-sheet

itself begins with an open threat and ultimately the dismissal becomes the only result , then beginning and end of proceeding read together is

indicative of a preconceived mind but before I answer it positively it will be necessary to answer other questions.

Question Nos. (v) and (vi).-When a reply to show cause is given by a proceedee, it is expected by the proceedee to state the fact in his defence

which actually existed/took place at the time for which he is charged, but if instead of stating such facts i.e. the state of affairs that existed he makes

uncalled for statement something which is not relevant to show the existence of a particular state of mind or body at the relevant time either of his

none of the allegation then that will definitely amount to use abusive language in the show cause, which itself becomes a case of framing further

charge but if he simply states that particular state of mind and body and other attending circumstance at that relevant time then such a statement is a

pure and simple statement of fact and it cannot be said to have been used to abuse his superiors. Charge-sheet dated. 9.2.1995 and charge-sheet

dated 15.2.1995 read together does not show in fact that what was the abusive language used in the show cause. In the absence of exact language

used, the charge became itself vague because it does not give an opportunity to the Court to appreciate whether language used was abusive. 1

have carefully gone to the show cause and found that he had taken plea that other officials who had come to inform had ""SHRAB PI LI THIS

AND UNPAR CHAD GAYEE THI"". In my view it does not amount to using abusive language to the authorizes as this simply states the state of

mind and body of allegation. So these two charges are not substantiated from the records. The Enquiry Officer rightly staled that these two charges

are vague and not substantiated from the records and the disciplinary authority was wrong in taking this into consideration in dealing with the

Enquiry Officer reports. These questions are answered accordingly. The answer of these questions gives an idea that ignoring the hard finding of

fact by the Enquiry Officer the disciplinary authority acted with preconceived mind.

Question No. III.-Since all the charges alleged were issued in a sequence of one charge and, therefore, one Enquiry Officer could have been

sufficient to conduct all the charges together but if the management in order to show fairness appointed two Enquiry Officer, in my view, it was

neither prejudicial to the petitioner nor does it reflect the vindictive mind of the management till this stage. Since both the enquiry- reports were

submitted to the same disciplinary authority and the disciplinary authority considered both the enquiry reports and thereafter second show cause

has been issued, there is no illegality or impropriety or violation of the principle of natural justice. This point is held to be in negative and in favour of

the respondents.

Question No. (ii).-The proceedee had some bitter experience in past. He demanded for security and videography of the proceeding and ultimately

gave in writing that the proceeding be. conducted ex parte. If his demands were not met then petitioner should have approached the higher

authority or should have come against that order at the relevant time before any appropriate authority but it appears on facts that are coming on the

record that he (sic) the past experience as excuse for absenting from the enquiry on two pretexts that he was not allowed to ask some question and

he was not given security or his demand of Video recording of proceeding was not conceded. In absence of any protest having been made before

the higher authorities or to the Court for a proper direction indicates that the petitioner unreasonably boycotted the enquiry and consequently if the

ex parte enquiry was conducted then it cannot be said that it was in violation of principle of natural justice. Non-fulfilling of that reasonable demand

of a proceedee during a departmental proceeding can not be a ground for justifying his absence from the enquiry and allowing the plea that the ex

parte enquiry was in violation of principles of natural justice. This question is answered accordingly against the petitioner.

Question No. (vi).-The learned counsel for the petitioner argued that since the other person with whom he had changed duty has not been

proceeded. So, it amounts to discrimination and on this score the charge should fail. The learned counsel for the respondents opposed this. The

petitioner himself was responsible for interchanging charge of duty; More at the relevant time other person was not present at the place of

occurrence and it is also not that, that ""other person had asked this petitioner not to on the switch of generator set. That person might be guilty of

inter-changing duty but he cannot be held guilty of disobedience of the order of his superior or acting detrimental to the management. Therefore, no

discrimination can be read in the impugned order. This point is determined against the petitioner.

Question No. (vi).-The learned counsel for the petitioner argued that the charge No. 1 does not indicate the loss to which the management was put

because of refusal not to on the switch of generator set. It is not the question of loss, rather it is the question of behaviour. Article 26.22 of the

Certified Standing Order reads as follows :

Article 26.22 : Any willful and deliberate act which is subversive of discipline or which may be detrimental to the interests of the Company is

misconduct.

An employee is made incharge of a particular job so that he does the job in the interest of management particularly when emergency arisen. There

is no showing that prior to the incident of the first charge the petitioner had made any complain of shortage of man power and about his difficulty in

operating the generator set. But when the emergent situation arose the refusal on the part of the petitioner not to on the switch of the generator set

on the plea that with the strength provided to him he would not on the switch of generator set. indicates his act detrimental to the interest of the

management and consequently it is a misconduct. No employee in my view can be allowed to raise such question in such specific juncture and it

amounts to serious misconduct. So the argument of the learned counsel for the petitioner that in absence of proving the actual loss caused to the

management, this charge is not proved, is not sustainable and the finding of the disciplinary authority that this was a case of misconduct under the

aforesaid circumstance is completely justified and for that the petitioner deserves punishment.

8. Now question arises whether the punishment of dismissal is excessive or whether it is adequate. The order of the disciplinary authority

Annexure-10 at page 58 the disciplinary authority reads as follows ""that 1 have also considered his past record and even if it had been clean, there

would still be justification in the order of dismissal of Mr. N.K. Giri from his service"". It appears that at the relevant time when the order was

passed, the past service record of the petitioner was considered and on consideration it was found to be clean. In such a situation it is not open-

for the respondents to save in the counter affidavit that it was unclean. If it be presumed that whatever is stated in the counter affidavit is correct

then obvious consequence of that is that finding of the disciplinary authority (supra) that the previous service record of the petitioner was

considered is completely false. Both these two statements, one indisciplinary order, and the other in counter affidavit cannot go side-by-side. En

awarding the punishment the charge vis a vis the service record is also a circumstance to be considered and if at that relevant time on application of

mind it was fond that the service record was clean then in the counter affidavit filed in the writ proceeding the respondents cannot be allowed to

take a plea that his service record was unclean. This amounts to defeat the order passed by the disciplinary authority. Thus I find and hold that only

on charge (No. ii) was proved, the loss caused to the management was actually not brought on record and particularly in the charge (No. ii) if the

service record was clean then for a single offence for dereliction of duty dismissal was not the only punishment. Hence this punishment is excessive.

Thus the remaining answer is that by awarding such a punishment the disciplinary authority reflected that he passed the order with preconceived

mind.

9. In the result the writ is allowed in part. The order of dismissal as contained in (Annexure-10) and the order of the appellate Court as contained

in (Annexure-11) so far punishment aspect is concerned is quashed. The respondents are directed to prescribe a more proper punishment other

than dismissal within a period of 2 months from the date of a receipt/production of a copy of this judgment.